

Advisory Memorandum

To: U.S. Commission on Civil Rights
From: Connecticut State Advisory Committee
Date: July 7, 2021
Subject: Advisory Memorandum on Nursing Homes – Legislative Update

In September of 2020, the Connecticut Advisory Committee (Committee) released an Advisory Memorandum discussing how the COVID-19 pandemic impacted the civil rights and liberties of protected older adult populations in Connecticut long-term care facilities/nursing homes.¹ The Advisory Memorandum noted that, although the Committee’s examination focused on the impact of COVID-19 on the older adult population in Connecticut, nationwide the coronavirus has taken a heavy toll on communities of color along with senior populations.² The Committee found that older adults faced alarming infection and mortality rates from COVID-19. There was also disturbing evidence that COVID-19 was having a disparate impact on nursing home populations of color. Moreover, in addition to the tragedy of illness and death, long-term care facility residents and their families were facing personal hardships and struggles as unintended consequences from rigid isolation efforts to prevent the spread of COVID-19 within those facilities led to widespread cases of failure to thrive among residents.³

The evidence before the Committee showed that COVID-19 presented a tremendous challenge to long-term care facilities and to policymakers responsible for protecting older adult and disabled populations, as well as populations of color. Given the magnitude of the civil rights concerns that the Committee’s briefings raised, the Committee urged the U.S. Commission on Civil Rights to address the issue promptly. The Committee expressed concern that, unless preventative action was taken and new best practices established, the virus would continue to devastate long-term care facilities and nursing homes in Connecticut and nationwide.

On March 10, 2021, Centers for Medicare & Medicaid Services, the federal agency that oversees Medicare and Medicaid services, issued new guidance on nursing home visitation due to the availability and administration of the COVID-19 vaccine.⁴ The new guidance stated that, “facilities should allow responsible indoor visitation at all times and for all residents, *regardless* of vaccination status of the resident, or visitor, unless certain scenarios arise that would limit visitation for:

¹ Connecticut State Advisory Committee to the U.S. Commission on Civil Rights, *Advisory Memorandum on Nursing Homes*, Sept. 10, 2020, <https://www.usccr.gov/files/2020-09-29-Connecticut-Nursing-Homes-and-Covid-19-Advisory-Memorandum.pdf>.

² Ibid.

³ Ibid.

⁴ Dep’t of Health and Human Services, Centers for Medicare & Medicaid Services, “CMS Updates Nursing Home Guidance with Revised Visitation Recommendations,” Fact Sheet, Mar. 10, 2021, <https://www.cms.gov/newsroom/fact-sheets/cms-updates-nursing-home-guidance-revised-visitation-recommendations>.

- Unvaccinated residents, if the COVID-19 county positivity rate is greater than 10 percent and less than 70 percent of residents in the facility are fully vaccinated;
- Residents with confirmed COVID-19 infection, whether vaccinated or unvaccinated, until they have met the criteria to discontinue transmission-based precautions; or
- Residents in quarantine, whether vaccinated or unvaccinated, until they have met criteria for release from quarantine.”⁵

The updated guidance also emphasized that “compassionate care” visits should be allowed at all times, regardless of a resident’s vaccination status, the county’s COVID-19 positivity rate, or an outbreak.⁶ Compassionate care visits include visits for a resident whose health has sharply declined or who is experiencing a significant change in circumstances.⁷ This new guidance was specifically intended to mitigate emotional and physical deterioration of residents.

In May, the Committee issued a press release recommending that the Connecticut General Assembly pass legislation to protect the civil rights of residents in nursing homes and long-term care facilities.⁸ The Committee encouraged the General Assembly to include six key components in any such legislation: (1) a clear definition of an “essential support person,” which will designate individuals who can visit with the resident without obstruction by long-term care facilities; (2) a clear definition of a “person-centered plan of care,” which would be developed by a resident or resident representative in consultation with health professionals; (3) the establishment of a state-wide policy for visitation with a long term-care facility resident; (4) the affirmation of residents’ civil rights and liberties by updating the resident bill of rights, including the right of residents to treat their rooms like their home and to use the technology of their choice to be able to keep in communication with family and other essential persons to support social and emotional needs; (5) the maintenance of adequate staffing; and (6) the continued provision of personal protective equipment to residents and staff.⁹

The Committee also noted that most of these innovative and responsive recommendations would come at no cost impact to the state or its municipalities.¹⁰

Ultimately, the Connecticut General Assembly passed several pieces of legislation addressing the needs of older adults in the 2021 session. The new legislation included three Public Acts signed by Governor Lamont that directly address and respond to the recommendations highlighted by the Committee’s Advisory Memorandum and press release. The following Public Acts are noteworthy not only for their innovative best practice responses to the pandemic, but also for the

⁵ Ibid.

⁶ Ibid. See also Dep’t of Health and Human Services, Centers for Medicare & Medicaid Services, to State Survey Agency Directors, Centers for Medicare & Medicaid Services, *Nursing Home Visitation – COVID-19*, Revised Apr. 27, 2021, <https://www.cms.gov/files/document/qso-20-39-nh-revised.pdf>.

⁷ Ibid.

⁸ U.S. Commission on Civil Rights, “Connecticut Advisory Committee to U.S. Commission on Civil Rights Recommends Legislation to Protect the Rights of Residents in Nursing Homes and Long-Term Care Facilities,” News Release, May 25, 2021, <https://www.usccr.gov/files/2021/05-27-CT-SAC-Nursing-Homes-PR-for-Publication.pdf>.

⁹ Ibid.

¹⁰ Ibid.

united bipartisan support they received in both chambers. Connecticut lawmakers deserve wide recognition for coming together in a truly responsive and bipartisan fashion to address these critical needs and civil rights protections.

- [Public Act No. 21-71](#) (an act concerning essential support persons and a state-wide visitation policy for residents of long-term care facilities). This law addresses the first three key recommendations by the Committee: (1) a clear definition of an “essential support person,” which will designate individuals who can visit with the resident without obstruction by long-term care facilities; (2) a clear definition of a “person-centered plan of care,” which would be developed by a resident or resident representative in consultation with health professionals; (3) the establishment of a state-wide policy for visitation with a long term-care facility resident.¹¹
- [Public Act 21-55](#) (an act strengthening the bills of rights for long-term care residents and authorizing the use of resident technology for virtual visitation and virtual monitoring). This law addresses the fourth recommendation by the Committee: (4) the affirmation of residents’ civil rights and liberties by updating the resident bill of rights, including the right of residents to treat their rooms like their home and to use the technology of their choice to be able to keep in communication with family and other essential persons to support physical, social and emotional needs.¹²
- [Public Act 21-185](#) (an act concerning nursing homes and dementia special care units). This law addresses the fifth and sixth recommendations by the Committee: (5) the maintenance of adequate staffing; and (6) the continued provision of personal protective equipment for residents and staff members.¹³

The public reaction to this new bipartisan legislation has been positive. Steven Hernández, Esq., who serves as Executive Director of the Connecticut General Assembly’s Commission on Women, Children, Seniors, Equity & Opportunity and provided testimony to the Committee for its Advisory Memorandum, stated, “The older adult, disabled, and resident of color populations in Connecticut’s long-term care facilities suffered tremendously during the height of the COVID-19 pandemic. These new laws, unanimously passed by the General Assembly, represent the best of cooperative decision-making and responsive governance. Our vulnerable resident populations and long-term care facilities will now have the tools and guidance they need to make sure any

¹¹ HB No. 6634, Spec. Sess. (Conn. 2021) (available at <https://www.cga.ct.gov/2021/ACT/PA/PDF/2021PA-00071-R00HB-06634-PA.PDF>); Connecticut State Advisory Committee to the U.S. Commission on Civil Rights, *Advisory Memorandum on Nursing Homes*, Sept. 10, 2020, <https://www.usccr.gov/files/2020-09-29-Connecticut-Nursing-Homes-and-Covid-19-Advisory-Memorandum.pdf>.

¹² SB No. 975, Reg. Sess., (Conn. 2021) (available at <https://www.cga.ct.gov/2021/ACT/PA/PDF/2021PA-00055-R00SB-00975-PA.PDF>); Connecticut State Advisory Committee to the U.S. Commission on Civil Rights, *Advisory Memorandum on Nursing Homes*, Sept. 10, 2020, <https://www.usccr.gov/files/2020-09-29-Connecticut-Nursing-Homes-and-Covid-19-Advisory-Memorandum.pdf>.

¹³ SB No. 1030, Spec. Sess. (Conn. 2021) (available at <https://www.cga.ct.gov/2021/ACT/PA/PDF/2021PA-00185-R00SB-01030-PA.PDF>); Connecticut State Advisory Committee to the U.S. Commission on Civil Rights, *Advisory Memorandum on Nursing Homes*, Sept. 10, 2020, <https://www.usccr.gov/files/2020-09-29-Connecticut-Nursing-Homes-and-Covid-19-Advisory-Memorandum.pdf>.

future pandemic responses prevent the harm of forced isolation and failure to thrive going forward.”¹⁴

The new state laws passed in Connecticut have also gained the attention of federal lawmakers, who have recently proposed similarly bipartisan legislation, including the Essential Caregivers Act of 2021 (H.R. 3733).¹⁵ Mairead Painter, who serves as Connecticut’s Long-Term Care Ombudsman and who also provided testimony to the Committee for its Advisory Memorandum, stated that the proposed federal legislation “allows essential caregivers access to long-term facilities to provide care and support to a facility resident during any public health emergency. It is vital that we as a society recognize the critical role that family members play in the care and well-being of residents in long-term care facilities. For more than a year, residents in these facilities were separated from their loved ones – far too many lost their will to survive, and many others have suffered untold emotional, psychological, and physical pain as a result of this separation. This bill would ensure that in any future health emergency under Section 319, designated essential caregivers are always able to access their loved ones in a manner consistent with all applicable health and safety protocols.”¹⁶

The Committee is pleased to see that state and national lawmakers are taking action to address the civil rights issues identified in the Committee’s Advisory Memorandum. The Committee will continue to monitor pandemic response developments on the state and national levels, in the form of new laws and best practices, which affirm its mission of protecting the rights of vulnerable populations in long-term care facilities.

¹⁴ See Memorandum to File, *Hernandez Comment*, July 7, 2021.

¹⁵ Essential Caregivers Act of 2021, H.R. 3733, 117th Cong. (2021).

¹⁶ <https://portal.ct.gov/LTCOP/AdvocacyCenter>